

The 21st Century Jury: Contempt, Bias and the Impact of Jury Service

Cheryl Thomas

Professor of Judicial Studies, UCL; Director, UCL Jury Project

☞ Bias; Contempt of court; Juries; Jurors; Jury service; Rape; Sexual offences

Bushell's Case¹ is now remembered primarily as establishing the right of juries to acquit in the face of the evidence and against judicial directions. But the issues raised about the 17th century jury system in that historic case are in some ways remarkably similar to those frequently raised about the 21st jury system: contempt, bias and the impact jury service can have on members of the public. For the jury in England and Wales today, the issues remain the same but the context is very different. This article presents the results of empirical research conducted by the UCL Jury Project with actual juries at court from 2017–2019. This is the first research ever conducted with real juries in England and Wales covering the issues of how to prevent juror contempt, whether there is juror bias in rape and sexual offences cases and what the personal and societal impact of jury service is for members of the public in England and Wales. It also reveals for the first time empirical evidence for why mock jury research and public opinion polls conducted with volunteers, not real serving jurors at court, is a fundamentally flawed method of understanding what real jurors think and how real juries work.

Juror contempt

At the trial of Quakers William Penn and William Mead in 1670, the judge fined and imprisoned members of the jury for contempt of court for, in the court's view, ignoring the evidence and refusing to follow the judge's legal directions, which would have resulted in conviction of the defendants for unlawful assembly.² In the 21st century in England and Wales (as well as elsewhere), a major issue of concern has also been juror contempt that results from not following the judge's instructions. But now the concern is about jurors doing their own investigation of the case³ that easy access to the internet and social media provides. Even though online activity

¹ *Bushell's Case*, 124 E.R. 1006

² The jury found the pair guilty "of speaking in Gracechurch Street" but refused to include in the verdict the words "to an unlawful assembly" as the judge had directed. The judge refused to dismiss the jury until they had reached a "lawful verdict", and when the jury returned with a verdict of guilty "of speaking to an assembly in Gracechurch Street" the judge had them locked in a room and denied food, drink or heat, tobacco or even a chamber pot. The jury then returned a not guilty verdict, after which the judge fined the jurors for contempt of court for returning a verdict contrary to the facts and they were imprisoned until they could pay the fine. One juror, Edward Bushell, refused to pay the fine and petitioned the Court of Common Pleas for a writ of habeas corpus. The court ultimately ruled that a jury could not be punished for the verdict it returned but that individual jurors could still be punished if they were found to have acted improperly. See John A. Phillips and T.C. Thompson, "Jurors v Judges in Later Stuart England: The Penn/Mead Trial and Bushell's Case" (1986) 4 *Law and Inequality* 189.

³ At the time of *Bushell's Case* jurors were expected to bring their own knowledge to the cases they tried. See John Langbein, "The Criminal Trial Before the Lawyers" (1978) 45(2) *University of Chicago Law Review* 263, 298, fn.105

has been the main focus of juror misconduct in recent years, it is not the sole means of juror contempt and illegal behaviour.

Previous research by the UCL Jury Project with real jurors at court established the extent to which jurors on a wide range of cases use the internet during the trial. Initial research was conducted in 2008–09,⁴ which explored the impact of media coverage of jury trials for the first time in this country. It found that in high profile cases, 26 per cent of jurors said they had seen some information about their case during the trial and 12 per cent of these jurors admitted to looking for information. In “standard cases”,⁵ 13 per cent of jurors on those cases said they had seen information about the case and 5 per cent admitted to looking for information. These research findings have sometimes been cited as evidence of widespread juror use of the internet to research their cases during trial. However, those findings need to be understood in the context of the time the research was conducted (over a decade ago), when trial judges were only beginning to develop their directions to juries about internet use and before social media use became widespread.

What that initial research could not determine was whether this potential juror contempt was a result of juror confusion over the rules of jury service or whether it was wilful disobedience of judicial directions. In *Bushell’s Case*, Chief Justice Vaughan ruled that jurors could not be punished (by fine or imprisonment) unless it could be proven that they were wilfully disobedient in not following the judge’s instructions.⁶ In the 21st century, whether jurors who fail to follow judges’ instructions do so in the conscious knowledge of the illegality of their actions remains a critical factor for cases of juror contempt or other unlawful behaviour. Further research was conducted by the UCL Jury Project from 2010–2013⁷ through post-verdict surveys with juries at court to establish the extent to which jurors understood the rules around the use of the internet during trial, exactly how jurors were using the internet during trial and whether jurors understood the need to report any improper conduct by other jurors to the court. That research found that while three-quarters of jurors understood the restrictions on using the internet during trial, a small proportion of jurors thought it was permissible to look up information about the case and discuss their jury service on social media.⁸ And almost half of all jurors who served on trials said they would not know what to do if something went wrong on the jury during the trial.⁹ From 2011 there were a number of committals of jurors for contempt or violation of the juror oath.¹⁰ But these seemed to have little deterrent effect on jurors; the research by the UCL Jury Project in this period found that most serving jurors were unaware of these cases even though information about them had been posted in juror waiting areas at court.¹¹

These research findings indicated that there was a need to achieve behavioural change amongst some jurors to avoid contempt. What was not clear was how best

⁴ C. Thomas, *Are Juries Fair?* (TSO, 2010), Ministry of Justice Research Series 1/10.

⁵ Thomas, *Are Juries Fair?*, p.13.

⁶ See K. Crosby “*Bushell’s Case and the Juror’s Soul*” (2012) 33(3) *Journal of Legal History* 251.

⁷ C. Thomas, “Avoiding the Perfect Storm of Juror Contempt” [2013] *Crim. L.R.* 483.

⁸ Thomas, “Avoiding the Perfect Storm of Juror Contempt” [2013] *Crim. L.R.* 483, 491.

⁹ Thomas, “Avoiding the Perfect Storm of Juror Contempt” [2013] *Crim. L.R.* 483, 498.

¹⁰ The most notable cases at the time were *Attorney General v Frail* [2011] EWCA Crim 1570; [2011] 2 Cr. App. R. 21 and *Attorney General v Dallas* [2012] EWHC 156 (Admin); [2012] 1 W.L.R. 991.

¹¹ Only 38% of jurors were aware of the prosecutions. See Thomas, “Avoiding the Perfect Storm of Juror Contempt” [2013] *Crim. L.R.* 483, 490.

to achieve this change. Following a review of juror contempt by the Law Commission of England and Wales,¹² the government decided to pursue behavioural change through legislation with the enactment of the Criminal Justice and Courts Act 2015.¹³ Sections 69–77 of the Act amended the Juries Act 1974, making a wide range of juror actions statutory criminal offences instead of a contempt of court (although the Act did not abolish juror contempt of court at common law). The change in the law, the cases of juror contempt and the research findings meant that, by 2016, judges’ directions to jurors at the start of the trial about their legal responsibilities had changed substantially. When the *Crown Court Compendium* was first published in 2016, it provided new guidance to judges on how to inform sworn jurors of their legal responsibilities at the start of the trial and subsequent reminders throughout the trial.¹⁴ Then in June 2016 in reaching a judgment in two more cases of juror contempt,¹⁵ the then Lord Chief Justice, Lord Thomas, ordered that notices in plain English be put up in jury waiting areas in all courts explaining illegal juror conduct. However, as the earlier research showed that information in jury waiting areas did not necessarily result in greater awareness of the contempt rules amongst serving jurors,¹⁶ the Lord Chief Justice subsequently requested that the UCL Jury Project conduct research with jurors at court to first identify the true extent of the problem of juror misconduct and to then identify an effective solution.

2017 research at the Central Criminal Court

Over an eight-month period from January through to August 2017, the UCL Jury Project conducted research with all juries that completed deliberations and were then being discharged from jury service at the Central Criminal Court in London (the Old Bailey). The entire 2017 study at the Old Bailey included 51 juries comprised of 605 jurors and had a 100 per cent participation rate. In the first stage of this research the purpose was to determine jurors’ existing awareness and understanding of their legal responsibilities, which now included the new statutory offences. Those jurors who took part in stage 1 of the research had, like all serving jurors at that time, been given information on these issues at various stages of their jury service and in various ways. This included information in the HMCTS pamphlet distributed with all juror summonses; the HMCTS film “Your Role as a Juror”¹⁷ shown to all new jurors at court on their first day of jury service; the jury officer’s speech to all new jurors on their first day of jury service; the judge’s directions to all sworn jurors at the start of the trial; and notices posted in the juror waiting area.

¹² The Law Commission, *Contempt of Court (1): Juror Misconduct and Internet Publications* (TSO, 2013), Law Com. No. 340.

¹³ The parameters of the statutory offence of juror contempt are set out in s.71 of the Criminal Justice and Courts Act 2015 (2015 Act).

¹⁴ See Judicial College, *Crown Court Compendium, Part 1: Jury and Trial Management and Summing Up* (Judicial College, 2016), section 3-1, “Opening remarks to the jury”, para.3, “At the start of the trial” and “Subsequent reminder of the jury instructions”.

¹⁵ *Solicitor General v Smith; Solicitor General v Dean*, unreported, 9 June 2016. The *Smith* case involved a juror researching a defendant’s previous convictions on the internet. The *Dean* case did not involve the internet, but instead involved a juror writing to a convicted defendant disclosing events in the jury room. See discussion of both cases in *Solicitor General v Stoddart* [2017] EWHC 1361 (QB) at [22]–[23].

¹⁶ Only 38% of jurors were aware of the prosecutions. See Thomas, “Avoiding the Perfect Storm of Juror Contempt” [2013] Crim. L.R. 483, 490.

¹⁷ See <https://www.youtube.com/watch?v=yQGekF-72xQ> [Accessed 16 September 2020].

In stage 1, each jury at the Old Bailey was seen immediately post-verdict before they left court at the end of their jury service. All jurors were invited to complete an anonymous and voluntary questionnaire that explored their understanding of their legal responsibilities as a serving juror. The questionnaire asked jurors what activities they thought constituted a criminal offence for a juror to do while serving on a jury; what a juror could discuss about the case and with whom while the trial is going on; what a juror could discuss about the case and with whom after the trial is over; and what to do if juror misconduct occurs. A total of 201 jurors on 17 trials took part in this stage 1 research with a 100 per cent participation rate.

Results of this first stage of the research at the Old Bailey showed that there were substantial gaps in juror understanding of their legal responsibilities. Juror understanding of the statutory criminal offences for serving jurors was highly variable (see Figure 1 below). While there was a high level of understanding of the need not to discuss their case on social media (92 per cent), juror understanding was low in certain areas critical to preventing statutory contempts: 37 per cent of jurors thought it was permissible to visit the crime scene on their own; 27 per cent thought it was permissible to discuss the case with family and friends; 15 per cent thought they could look up information about the defendant; and 24 per cent thought they could look up information about other parties to the case. Juror understanding was especially low in relation to actions that had become statutory criminal offences in 2015 and had not previously been considered a clear contempt under common law (i.e. 56 per cent thought it was permissible to look up information about the judge or the legal teams in a case).

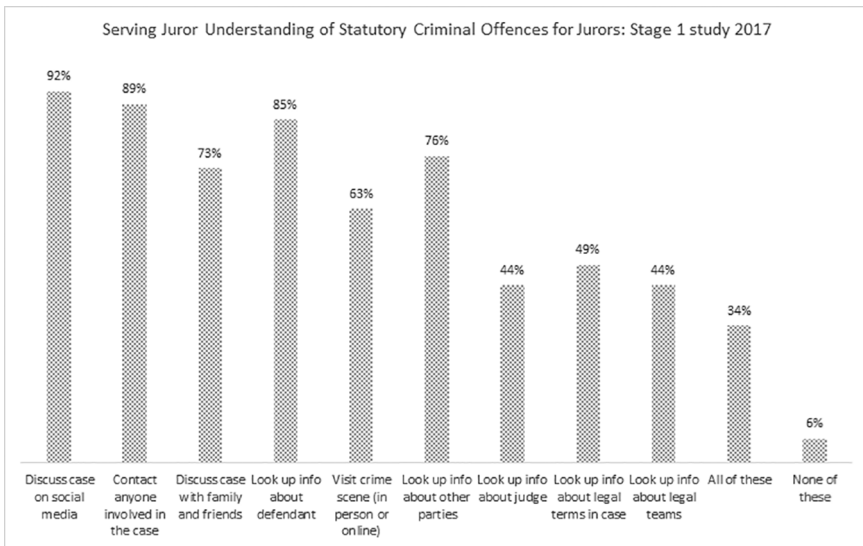


Figure 1: Juror understanding of statutory contempt in 2017

Juror understanding of the disclosure rules that apply to jurors both during and post-trial was also low. As Figure 2 below shows, less than half of all jurors (49 per cent) identified the correct rule on what could be discussed and with whom during the trial. And as Figure 3 below shows, only just over half (53 per cent) of jurors identified the correct rule on post-trial disclosure.



Figure 2: Juror understanding of in-trial disclosure in 2017

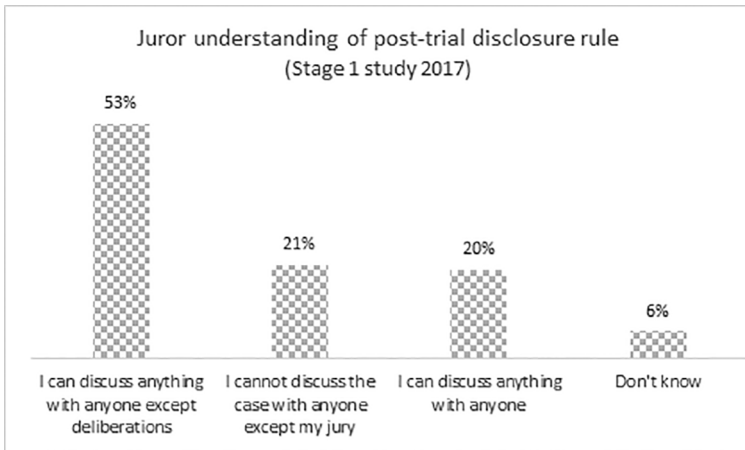


Figure 3: Juror understanding of post-trial disclosure in 2017

Overall, the research showed that there was enough lack of understanding amongst jurors about the rules of jury service and their legal responsibilities to indicate that better methods needed to be found to inform jurors of the rules on juror conduct. The fact that confusion about contempt and jurors’ legal responsibilities still existed despite the information given to jurors suggested that the information may not have been provided to jurors in a way and at a time that was most likely to result in the greatest understanding. For instance, at that time almost all the information given to jurors (at all courts not just the Old Bailey) about their legal responsibilities as a serving juror was given to them prior to being sworn on to a trial (i.e. at the time of being summoned and on the first morning of jury service for everyone) even though some of those summoned may never attend court and some of those who do attend court may never end up being sworn on to a trial. Much of the information on contempt was also given to summoned jurors at court at the same time as a large volume of other information. On the first morning of jury service, most summoned jurors will be experiencing the novelty

of being in a court building for the first time, and they are presented with a substantial amount of new information in a short period of time (covering a wide range of issues such as how to claim loss of earnings, travel and subsistence expenses, the court timetable, how empaneling and swearing a jury occurs, etc.). All of this created the prime conditions for information overload.¹⁸

Following the stage 1 findings, the Lord Chief Justice asked the UCL Jury Project to design and pilot a new juror notice at the Old Bailey. The aim of the pilot was to test whether additional written guidance given only to sworn jurors at the start of the trial would improve juror understanding and compliance with the rules of juror conduct and thereby prevent juror contempt. The new juror notice (“Your Legal Responsibilities as a Juror”)¹⁹ was designed based on known design principles that promote better understanding of legal information by lay people.²⁰ These include providing guidance to jurors in plain English; in short sections covering individual topics; with images that reflect key concepts; and in a format that indicates the importance of the content (in this case the notice was designed to mirror the format of the juror summons). It was also important that the information be presented at the optimum time and manner to help juror understanding. The content of the notice was reviewed by the Lord Chief Justice, senior members of the Court of Appeal Criminal Division, the Criminal Procedure Rule Committee and the judges at the Old Bailey prior to the pilot taking place.

Content of the juror notice

The content of the juror notice is based on (1) the current statutory offences for jurors under the 2015 Act and (2) research findings on rules causing confusion for jurors. The notice covers the s.71 prohibition on research by jurors during the trial, including seeking information about any person involved in or related to the case; the judge in the case; the lawyers in the case; witnesses; relevant law in the case; the law of evidence; and court procedures. The notice also covers the statutory offences under s.72 (sharing such research with other jurors), s.74 (disclosing any details of the jury’s deliberations) and the fact that offences under the Act carry a maximum sentence of two years’ imprisonment. In addition, the notice covers information that research by the UCL Jury Project had found jurors wanted or needed.²¹ This includes information on the importance of the jury; the need for jurors to ignore media reports of the case; reasons why the rules on juror conduct exist; the need for compliance with the rules; an explanation of and need for the collective responsibility of the jury; how to report a breach of the rules; what to

¹⁸ Defined by the American Psychological Association as “the state that occurs when the amount or intensity of information exceeds the individual’s processing capacity, leading to anxiety, poor decision making, and other undesirable consequences”: *APA Dictionary of Psychology*, <https://dictionary.apa.org/information-overload> [Accessed 16 September 2020]. Psychologists have recognised for many years that humans have a limited capacity to store current information in the memory. According to American psychologist George Armitage Miller, under information overload conditions, people become confused and are likely to make poorer decisions based on the information they have received as opposed to making informed ones. See G.A. Miller, “The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity for Processing Information” (1956) 63(2) *Psychological Review* 81.

¹⁹ The juror notice can be found at <https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/october-2015/jf001-eng.pdf> [Accessed 16 September 2020].

²⁰ See Stanford University Legal Design Lab, “Core principles for good visualizations”, <http://www.legaltechdesign.com/communication-design/core-principles-for-good-visualizations/> [Accessed 16 September 2020].

²¹ See Thomas, *Are Juries Fair?* (2010); Thomas, “Avoiding the Perfect Storm of Juror Contempt” [2013] *Crim. L.R.* 483.

do if a juror has any questions or needs any assistance; and what support is available to jurors at the end of the trial if they are affected by the case.

The juror notice was piloted with all newly sworn juries at the Old Bailey from April through July 2017. At the end of the judge's opening remarks to the jury and before the prosecution opening, each sworn juror²² was given their own individual copy of the juror notice "Your Legal Responsibilities as a Juror" by the usher at the direction of the judge. Once the jurors were given the document, the judge explained to the jurors that the notice was a summary of what they had just been told their about their legal responsibilities as a juror; that they needed to take some time at the next break to read the document carefully and make sure they understood the rules it contained; that the notice explained what to do if they had any questions about their responsibilities as a juror; and that they should keep the notice with their summons at all times. A notation was also made into the trial record that the juror notice had been handed to each member of the jury. It is important to note that the notice was designed to reinforce, not replace, the judge's oral directions to the jury on their legal responsibilities. The notice did, however, replace any written information any judge may have previously provided to jurors on their legal responsibilities at the start of the trial.²³

Pilot results

All of the juries that received the juror notice in the pilot and were discharged after deliberations were seen immediately post-verdict, and they were asked to complete the same questionnaire the juries in stage 1 had completed. A total of 404 jurors on 34 trials took part in the pilot, with a 100 per cent participation rate. The results of the pilot therefore provided a controlled test of the impact of the new juror notice on juror understanding of their legal responsibilities and the rules of jury service. In the pilot, juror understanding of their legal responsibilities increased substantially in every category with the introduction of new notices (see Figure 4 below). The new juror notice achieved close to 100 per cent understanding with jurors in the most critical categories of the statutory offences. This included not discussing the case with family or friends or on social media, not looking up information about any parties involved in the case, including the defendant, not contacting anyone involved in the case and not visiting the crime scene (in person or online).

²² Alternate jurors are formally sworn on to the jury and they must therefore also receive a copy of the juror notice at the same time as the main 12 jurors.

²³ There is a slightly amended version for use in cases where there is any in camera evidence. In addition, in 2018 the Chief Coroner of England & Wales issued Guidance No.27, *Jury Irregularities* requiring a special Inquest version of the Juror Notice to be used in all inquest jury trials. <https://www.judiciary.uk/publications/chief-coroner-guidance-no-27-jury-irregularities/> [Accessed 22 September 2020].

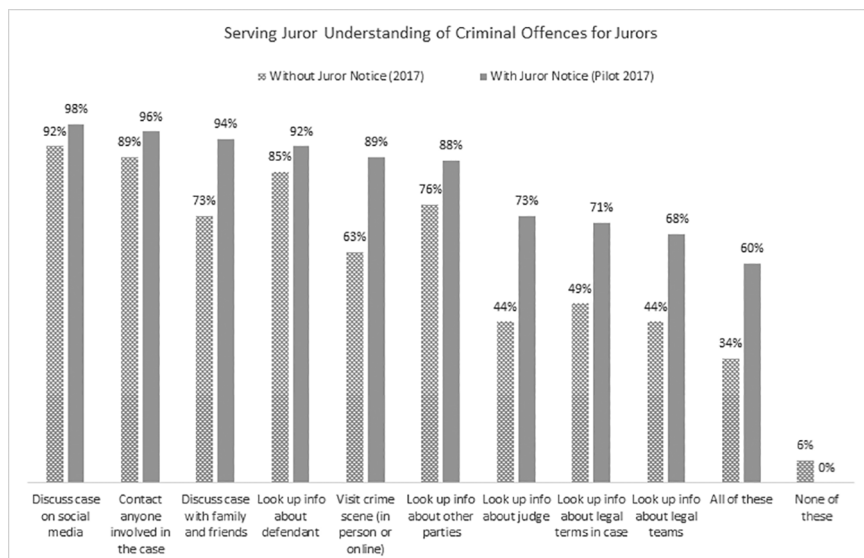


Figure 4: Impact of juror notice pilot at the Old Bailey (2017)

The findings were reported to the Lord Chief Justice, the senior judicial criminal team and the Criminal Procedure Rule Committee. As a result, on 31 July 2017, *CPD VI (Trial)* para.26G.5 was adopted requiring that each sworn juror in every jury trial in England and Wales be provided with the juror notice at the time of the judge’s opening remarks to the jury.²⁴ To implement the practice direction, it was agreed that there would be a phrased roll-out of the juror notice in 2017–18, with “early adopter courts” selected in each court region.²⁵ A bilingual version was also introduced in all courts in Wales.²⁶ Following the successful roll-out of the juror notice in the early adopter courts, the juror notice became compulsory in all jury trials in all courts in England and Wales as of 30 April 2018. As a result, the juror notice “Your Legal Responsibilities as a Juror” has become the first universal written direction required in all jury trials in England and Wales.

When *CPD VI (Trial)* para.26G.5 was adopted, it was agreed that the Criminal Procedure Rule Committee would review the introduction of the juror notice after one year. To do so the UCL Jury Project conducted further identical post-verdict research with juries in 2018–19 at six courts in four different court regions covering the London (Southwark, Blackfriars and the Old Bailey), South West (Bristol), South East (Oxford) and North West (Manchester Minshull Street) court regions. This additional assessment of the effectiveness of the Juror Notice was conducted with 771 jurors serving on 65 trials. The research found that the substantial increase in juror understanding of their legal responsibilities and disclosure rules seen in the juror notice pilot at the Old Bailey (2017) and in the early adopter courts

²⁴ See <https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/criminal-practice-directions-amendments-july-2017-summary-of-changes.pdf> [Accessed 16 September 2020].

²⁵ The “early adopter courts” were Southwark, Isleworth, Bristol, Oxford, Durham, Manchester Minshull Street, Cardiff and Swansea.

²⁶ See <https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/j001-cym.pdf> [Accessed 16 September 2020].

(2017–18) continued and increased further once the juror notice became compulsory in all courts.

Juror understanding of statutory offences under the 2015 Act

After over a year of full implementation in all Crown Court jury trials, the new juror notice had achieved almost 100 per cent understanding with jurors in the most critical categories of the statutory offences (see Figure 5 below). These include prohibitions on the use of social media (98 per cent); contact with parties to the case (98 per cent); researching the defendant (96 per cent); researching other parties to the case (95 per cent); visiting the crime scene, in person or virtually (98 per cent); and discussing the case with family and friends (98 per cent). Those jurors who were now able to correctly identify all the statutory contempt offences for jurors more than doubled from 34 per cent without the notice to 70 per cent with the notice following full implementation. There are three statutory offences where the notice has also achieved substantially increased levels of understanding amongst jurors but where overall levels of understanding that these are offences is somewhat lower. These include statutory prohibitions against researching the judge in the case (44 per cent without the notice; 83 per cent with the notice); researching the lawyers in the case (44 per cent without the notice; 79 per cent with the notice); and researching the law and legal terms in the case (49 per cent without the notice; 81 per cent with the notice).

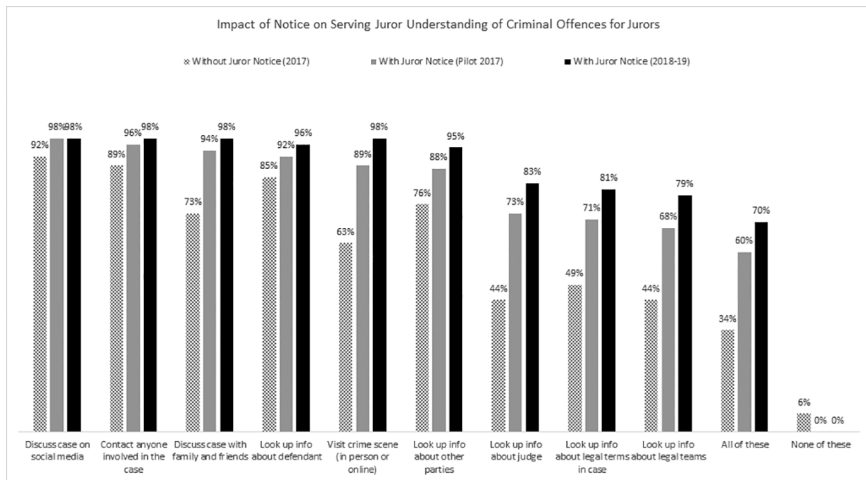


Figure 5: Impact of the juror notice in the Crown Court 2017–19

Juror understanding of the rules on discussing their case

Since the notice has been used, there has also been a marked increase in juror understanding of the disclosure rules that relate to what they can discuss and with whom (1) during the trial and (2) when the trial is over. As Figure 6 below shows, the proportion of jurors that identified the correct rule on what they could discuss during the trial increased from 49 per cent to 73 per cent with the juror notice.

Almost all jurors who selected an incorrect answer (26 per cent) selected the answer that would not result in their committing contempt (i.e. “I could not discuss the case with anyone at anytime”).

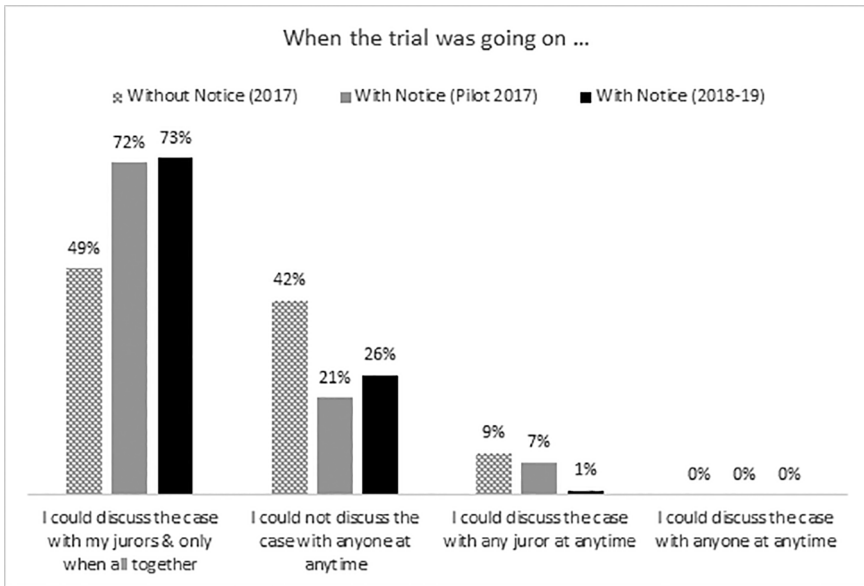


Figure 6: Juror understanding of in-trial disclosure 2017–19

Juror understanding of the post-trial disclosure rule also substantially improved with the juror notice (see Figure 7 below). Prior to the introduction of the juror notice only just over half of jurors (53 per cent) correctly identified the post-trial disclosure rule, that they could discuss the case with anyone with the one exception that they must not discuss anything that occurred in the jury’s deliberations. With the juror notice this increased to almost three-quarters of all jurors (73 per cent). Again, almost all jurors who selected an incorrect answer about post-trial disclosure selected the answer that would not result in their committing contempt (i.e. “I cannot discuss the case with anyone except my jury”), although it is not helpful for juror wellbeing if some jurors do not realise that they can discuss some aspects of the case after the trial is over. And the notice halved the proportion of jurors who might commit contempt post-trial (reducing from 20 per cent to 10 per cent those jurors who said they could discuss any aspect of the case with anyone post-trial).

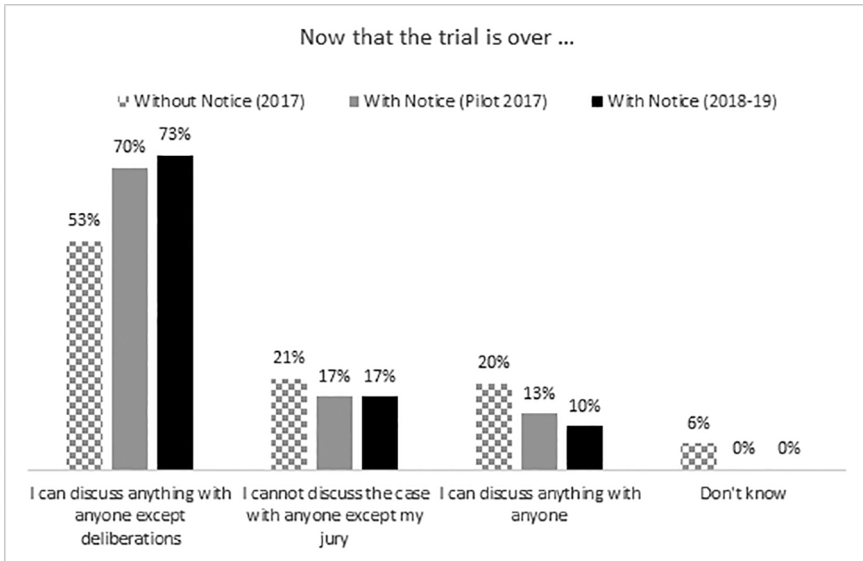


Figure 7: Juror understanding of post-trial disclosure 2017–19

In addition to the anonymous surveys, jurors also provided some qualitative feedback about the content, design and timing of the new juror notice. All of the juror comments about the notice were positive. In terms of content and design, the jurors said they found the notice easy to read, they liked how the information was broken up into bite-sized sections and they liked the use of images; they did not find the images patronising and felt the images helped to break up text and made the notice easy to follow. In terms of timing, the jurors felt that the juror notice was given out at the right time, that they would not have read the notice if it had been given out earlier and that it would not have been helpful if they had been asked to read the notice at the time it was handed out (instead of being told to read it at the next break). An electronic copy of the notice was available, but no jurors asked for this and all said they preferred to have a hard copy of the notice. Jurors also said that it was helpful to be able to show the juror notice to their family and friends to explain why they could not discuss the case with them.

Of course, the new Juror Notice will not and cannot prevent all juror misconduct. As the results of the research show, even with the Juror Notice there were still some jurors who did not correctly identify all juror offences. And the Notice will not prevent willful disobedience by a juror.²⁷ But the Notice has filled a clear gap in jurors' understanding of the rules of jury service and their legal responsibilities as jurors, and it has thereby reduced the chances of jurors unwittingly committing criminal offences while fulfilling their public duty.

²⁷ There was one reported case of juror misconduct that occurred during the Notice's introduction. See *R v KK* [2019] EWCA Crim 1634. This appeared to be a clear case of willful disobedience by a juror despite having read the Notice. But it also appeared to demonstrate the effectiveness of the Notice in prompting other members of the jury to report the misconduct to the court before a verdict was returned.

Juror bias: from claims of 17th century religious dissent to 21st century rape myths

In *Bushell's Case*, the four jurors who refused to be coerced by the judge into returning a guilty verdict of unlawful assembly against Penn and Mead were accused of being Dissenters who were biased against the liturgy of the Anglican Church.²⁸ Their refusal to convict the defendants for breaches of the Conventicle Act was attributed to this, although there was no concrete evidence to support these claims of juror bias. The 21st century jury in England and Wales has recently come under attack on the grounds that jurors are biased against complainants in rape cases and refuse to convict defendants in rape and sexual offences cases because they believe myths and stereotypes about rape and sexual behaviour.²⁹ Until now there has been no empirical evidence based on research with real jurors at court in England and Wales to either substantiate or refute these claims. But this has not deterred the making of assertions about jury bias in rape and sexual offences cases, including calls for the removal of juries in rape cases.³⁰

None of these claims were based on any research with actual juries in England and Wales. Instead they have relied on public opinion polls, a single study that used students and volunteers to act as proxy ("mock") jurors³¹ and anecdotal views of prosecutors in rape cases who were asked post-acquittal why they thought they did not achieve a conviction in their cases. Despite the lack of any empirical evidence from research with real jurors, these claims led to a petition to Parliament in 2018 calling for "All jurors in rape trials to complete compulsory training about rape myths".³² The petition went on to make the following assertions:

"Research shows that jurors accept commonly held rape myths resulting in many incorrect not guilty verdicts. Rapists are walking free from court, although evidence is robust. This ruins lives. Rape conviction in the UK is very low. Compared to other crimes conviction is 21% lower. Research by Rape Crisis & Alison Saunders, Director of Public Prosecutions, finds that jurors often accept rape myths & thus acquit rapists who are in fact guilty. 66% of jurors do not understand judges' legal directions which attempt to dispel rape myths, but fail. Jurors need proper rape myth training prior to & throughout trials."³³

The petition provided no references that corroborated any of the statistics cited. The petition simply provided links to a Rape Crisis webpage describing different rape myths,³⁴ a general Wikipedia page about rape myths³⁵ and a BBC news story

²⁸ Edward Bushell and the three other jurors who refused to follow the instructions of the trial judge were thought to be Dissenters, Protestants who refused to follow the newly imposed rules of the Anglican liturgy; Phillips and Thompson, "Jurors v Judges in Later Stuart England: The Penn/Mead Trial and Bushell's Case" (1986) 4 *Law and Inequality* 189, 207.

²⁹ N. Hopkins, "Enduring myths about rape victims lead to acquittals, says chief prosecutor", *The Guardian*, 30 January 2012.

³⁰ A. Topping, "Scrap juries in rape trials, Labour MP suggests", *The Guardian*, 21 November 2018.

³¹ D. Willmott, *An Examination of the Relationship between Juror Attitudes, Psychological Constructs, and Verdict Decisions within Rape Trials*, Doctoral thesis, University of Huddersfield (2018).

³² See <https://petition.parliament.uk/archived/petitions/209573> [Accessed 16 September 2020].

³³ See <https://petition.parliament.uk/archived/petitions/209573> [Accessed 16 September 2020].

³⁴ See <https://rapecrisis.org.uk/mythsvsrealities.php> [Accessed 16 September 2020].

³⁵ See https://en.wikipedia.org/wiki/Rape_myth [Accessed 16 September 2020].

about a Scottish public information campaign about sexual violence.³⁶ None of these sources cited any of the statistics or claims made in the petition. At the time of the petition there had been no research in England and Wales with real jurors on the issue of whether they accepted commonly held rape myths or understood judges' directions on such myths. This meant that the petition's claim that research showed jurors accepted commonly held rape myths and did not understand judges' directions on these myths could not have been correct. It is unclear what the source could be of the statistic cited that the conviction rate in rape trials is 21 per cent lower than other crimes. Detailed research on all jury verdicts in all courts in England and Wales over a substantial period of time had already shown that juries convict in rape cases more often than they acquit, and that the jury conviction rate in rape cases is higher than it is for other serious crimes such as attempted murder, GBH, and threatening to kill.³⁷

Response to the petition and initiation of research

The petition to Parliament received 10,000 signatures, and this meant that the government was required to provide a written response to the petition. This government response, issued in April 2018 in consultation with the senior judiciary, stressed that "ensuring that the balance is struck between jurors understanding rape myths, without encroaching on the rights to a fair trial of the defendant is not a straightforward task".³⁸ How jurors are directed in cases is a judicial responsibility. The government response explained that the President of the Queen's Bench Division (then Sir Brian Leveson), in his capacity as Head of Criminal Justice, had commissioned the UCL Jury Project to conduct research with serving jurors at a range of courts around the country. This research would be conducted in order to provide the senior judiciary with a detailed insight into whether any changes were needed in how jurors are directed in rape cases. The response highlighted the fact that

"rather than rely on anecdote, it is essential that appropriate research is conducted with those who have sat on juries initially to assess where there may be issues in relation to rape myths. This research has never been undertaken before and is a complex task."³⁹

Existing judicial guidance to juries in England and Wales

It should be noted that, in England and Wales, judges have been directing juries on rape myths and stereotypes for many years. More than a decade ago the Court of Appeal in *JD*⁴⁰ endorsed judges providing juries with appropriate directions to counter the risk of stereotypes and assumptions about sexual behaviour and reactions to non-consensual sexual conduct. That case specifically endorsed judicial directions to the jury on avoiding myths and stereotypes in relation to how an individual may react to the trauma of sexual assault, to delayed reporting of sexual

³⁶ Lucy Adams, "Campaign aims to destroy rape myths and misconceptions" (*BBC News*, 7 March 2017), <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-39182779> [Accessed 16 September 2020].

³⁷ Thomas, *Are Juries Fair?*, p.30.

³⁸ See <https://petition.parliament.uk/archived/petitions/209573> [Accessed 16 September 2020].

³⁹ See <https://petition.parliament.uk/archived/petitions/209573> [Accessed 16 September 2020].

⁴⁰ *JD* [2008] EWCA Crim 2557; [2009] Crim. L.R. 591.

offences and to how an individual may react to a sexual assault by a partner. The Court of Appeal has subsequently endorsed judicial directions in sexual offences cases that caution juries “against applying stereotypical images of how an alleged victim or an alleged perpetrator of a sexual offence ought to have behaved at the time, or ought to appear while giving evidence”.⁴¹ As the court stated in 2010 in *M*, judicial directions on myths and stereotypes in sexual offences cases that are properly tailored to the case do not offend the common law principle that judicial notice can be taken only of facts of particular notoriety or common knowledge.⁴² What is not permitted is either the prosecution or defence using experts to provide evidence in court on what is known about reactions to non-consensual sexual offences.

In addition, all judges in the Crown Court are provided with specific guidance and example directions for directing juries on the issue of myths and stereotypes in rape and sexual offences cases. Since its inception in 2016, the *Crown Court Compendium* has included detailed information on directing juries about myths and stereotypes in rape and sexual offences cases. The most recent edition of the *Compendium* includes guidance and example directions on the following specific issues that relate to myths and stereotypes in rape and sexual offences⁴³: avoiding assumptions about rape; delayed reporting of allegations; inconsistent accounts; display of emotion when giving evidence; clothing of the complainant; intoxication (drink/drugs) of the complainant; previous sexual activity between the complainant and defendant; differing responses to sexual assaults; and the sexual experience of the defendant.⁴⁴

Judges are also free to decide when to direct juries in rape and sexual offences cases on myths and stereotypes. This can be at the outset of the case, and if done then it can also be repeated at any point in the trial that the judge deems helpful to the jury. Sir Brian Leveson in his *Review of Efficiency in Criminal Proceedings* endorsed giving the jury directions at the point in the trial when they are of most use to the jury:

“I know of no reason why it should not be open to the judge to provide appropriate directions at whatever stage of the trial he or she considers it appropriate to do so.”⁴⁵

This approach was formally adopted in Criminal Procedure Rules r.25.14, which requires the judge to give the jury directions about the law at any time that will help the jurors to evaluate the evidence they hear.⁴⁶ This has prompted innovation by judges in directing juries about myths and stereotypes in rape and sexual offences

⁴¹ The Court of Appeal in *M* [2010] EWCA Crim 1578; [2011] Crim. L.R. 79, quoting from the 2010 *Crown Court Benchbook*, “Directing the Jury”.

⁴² *M* [2010] EWCA Crim 1578.

⁴³ Judicial College, *Crown Court Compendium* (Judicial College, 2020), section 20-1, “Sexual offences—the dangers of assumptions”.

⁴⁴ The *Compendium* also provides guidance and example jury directions for judges in sexual offences cases on consent and reasonable belief in consent (section 20-4); capacity and voluntary intoxication (section 20-5); historical allegations (section 20-2); and grooming children (section 20-3).

⁴⁵ Sir Brian Leveson, *Review of Efficiency in Criminal Proceedings* (Judiciary of England and Wales, 2015), para.238.

⁴⁶ In addition, *CPD VI (Trial)* para.26K (“Juries: Directions, Written Materials and Summing Up”) requires judges and recorders to give careful thought to the timing of their jury directions.

cases, although it does mean that there is variability on when and how judges direct juries on this issue.

Myths and stereotypes research with real juries: 2018–2019

The UCL Jury Project undertook research in 2018–19 to address two key questions: (1) to what extent do real jurors who have served on juries believe rape myths and stereotypes; and (2) should judges provide any additional guidance to jurors on rape myths and stereotypes? The research was conducted through an anonymous and voluntary survey of actual juries at court in England and Wales immediately post-verdict.⁴⁷ A total of 65 discharged juries (771 jurors) in 4 different court regions took part in the research. The cases the juries tried covered a range of cases, including sexual and non-sexual offences. There was a 99 per cent participation rate.⁴⁸

The issues covered in the survey included jurors' attitudes to rape, sexual offences and sexual behavior, their views on long-standing "rape myths" as well as more recent claims about jury bias in rape and sexual offences cases. Jurors were asked to respond to a series of statements, which included standardised questions on rape myths covered in public opinion polls and research with non-jurors.⁴⁹ Because the reliability and validity of surveys on this topic is known to depend on questions being clear and relevant to the respondents,⁵⁰ where necessary the questions were tailored to this jurisdiction. Some of the questions related to topics with a clear and agreed factual basis (e.g. occurrence of stranger versus acquaintance rape), while others related to topics where no agreed factual basis exists (e.g. the prevalence of false allegations against famous people).

The design of the research meant it was able to explore a range of questions. Beyond the primary question of whether those who actually serve on real juries believe rape myths and stereotypes, the study examined whether any correlations exist between juror attitudes about sexual offences and juror demographics (age, gender, religion, ethnicity and socio-economic group), court region and the type of case jurors served on. The research was also able to assess whether it is valid to use public opinion polls and research with "mock" jurors to make assumptions about the views of actual jurors.

Findings: What do jurors really believe?

As Figure 8 below shows, hardly any jurors believe what are often referred to as widespread myths and stereotypes about rape and sexual assault. The overwhelming majority of jurors do not believe that rape must leave bruises or marks, that a person will always fight back when being raped, that dressing or acting provocatively or going out alone at night is inviting rape, that men cannot be raped or that rapes will always be reported immediately. The small proportion of jurors

⁴⁷ Identical research was conducted with real jurors in Northern Ireland covering jurors that tried cases in January to April 2019 at Laganside Court Centre in Belfast and the findings were shared with the Gillen Review.

⁴⁸ The 65 juries comprised 60 juries of 12, three of 11 and two of 10 with a total of 773 jurors, of which 771 jurors (99.7%) took part in the research.

⁴⁹ Including those based on the Illinois Rape Myth Acceptance Scale (IRMA) as updated. See S. McMahon and G.L. Farmer, "An Updated Measure for Assessing Subtle Rape Myths" (2011) 35(2) *Social Work Research* 71.

⁵⁰ McMahon and Farmer, "An Updated Measure for Assessing Subtle Rape Myths" (2011) 35(2) *Social Work Research* 71, 71.

who do believe any of these myths or stereotypes amounts to less than one person on a jury.

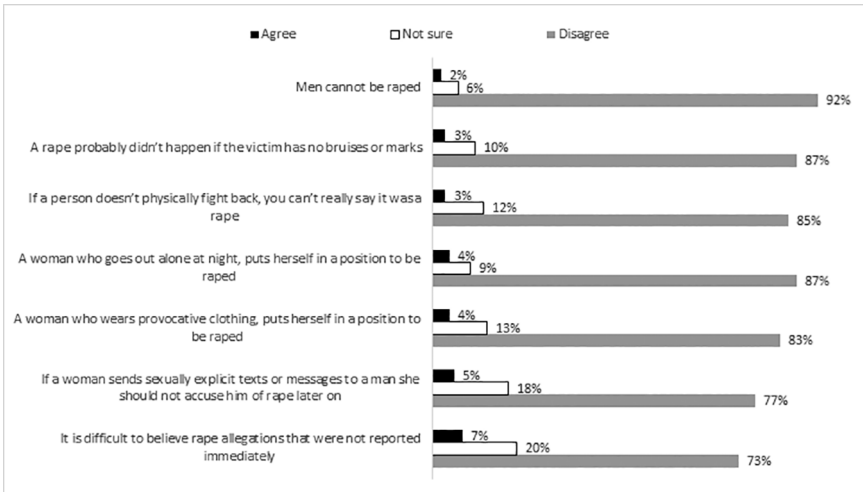


Figure 8: Juror attitudes to rape myths and stereotypes

The research also found that the overwhelming majority of jurors believe that someone who has been raped may be reluctant to reveal this to anyone including the police, that rape within a relationship can occur for a long time before a person makes a complaint to the police and that it is a difficult thing to do to give evidence in court about rape (see Figure 9 below). Again the small proportion of jurors who do not hold these views amounts to less than one person on a jury.

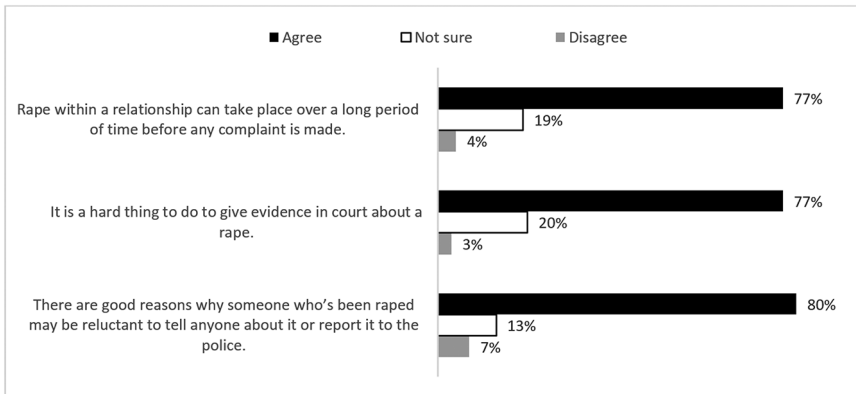


Figure 9: Juror attitudes to rape myths and stereotypes

The research did identify two factual issues where enough jurors were either unsure what to believe or believed something that was factually incorrect to indicate that better guidance for jurors may be helpful. The first is the issue of stranger versus acquaintance rape. Official statistics show that most rapes are committed

by someone known to the victim (87 per cent of rapes) not a stranger (13 per cent).⁵¹ As Figure 10 below shows, while most jurors (64 per cent) correctly believe that a person is more likely to be raped by someone they know than a stranger and only 5 per cent incorrectly believe a rape is most likely to be committed by a stranger, almost a third of jurors (31 per cent) said they were not sure about this.

The second issue is whether a rape complainant will necessarily be emotional when giving evidence about a rape. Over three decades ago, research identified “rape trauma syndrome”,⁵² which results in some victims demonstrating visible fear, anger or anxiety when describing a rape but other victims masking their feelings by composed or subdued behaviour.⁵³ Subsequent research has confirmed that the amount of emotion displayed by a rape victim when recounting a rape can vary substantially, and this reflects more widespread aspects of post-traumatic stress disorder (PTSD).⁵⁴ There is no clear view held by jurors in England and Wales on this issue: 43 per cent say they would expect a complainant to be very emotional when giving evidence about a rape, while 22 per cent said they would not expect this and 35 per cent are uncertain on this issue. Both acquaintance v stranger rape and emotion in recounting a rape are issues with an established and agreed factual basis where it appears jurors could benefit from additional guidance.

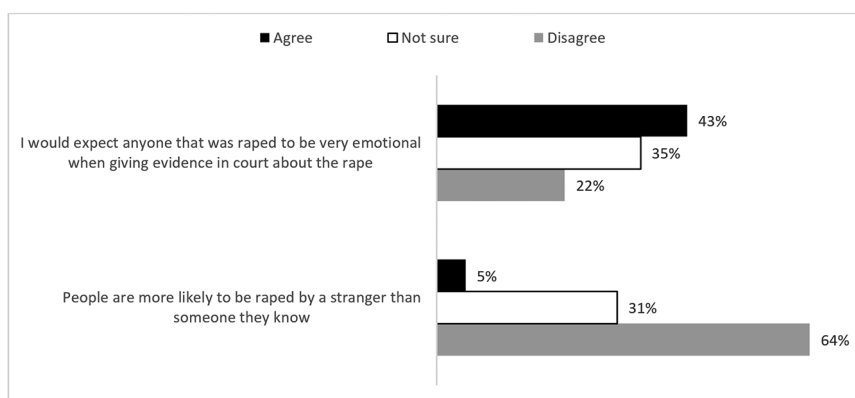


Figure 10: Juror attitudes to rape myths and stereotypes

There were several other topics where larger proportions of jurors said they were not sure what to believe (see Figure 11 below). A majority of jurors (55 per cent) said they were not sure about whether people who make allegations of rape are often not believed by the police; 46 per cent said they were not sure whether some people will make up allegations about sexual offences by a famous person; 47 per cent said they were unsure whether some women who said they were raped agreed to have sex but then regretted it afterwards; and 36 per cent were unsure whether it is hard to know if rape actually occurred when both parties are drunk.

⁵¹ Office of National Statistics, *Sexual offences in England and Wales: year ending March 2017* (TSO, 2018), Figure 10.

⁵² See A. W. Burgess and L. L. Holmstrom, “Rape Trauma Syndrome” (1974) 131 *American Journal of Psychiatry* 981; A. Burgess, “Rape Trauma Syndrome” 1 *Behavioral Science and Law* 97 (Summer 1983).

⁵³ These contrasting reactions were described as “expressed style” and “controlled style” A. W. Burgess and L. L. Holmstrom, “Rape Trauma Syndrome” (1974) 131 *American Journal of Psychiatry* 981.

⁵⁴ P. Frazier and E. Borgida, “Rape Trauma Syndrome: A Review of Case Law and Psychological Research” (1992) 16 *Law and Human Behavior* 293.

However, unlike the issue of stranger versus acquaintance rape and emotion on giving evidence about a rape, there is no agreed factual basis or empirical evidence to say definitely what the correct answer is on these issues, and this raises the question of how judges could possibly direct a jury on these issues.

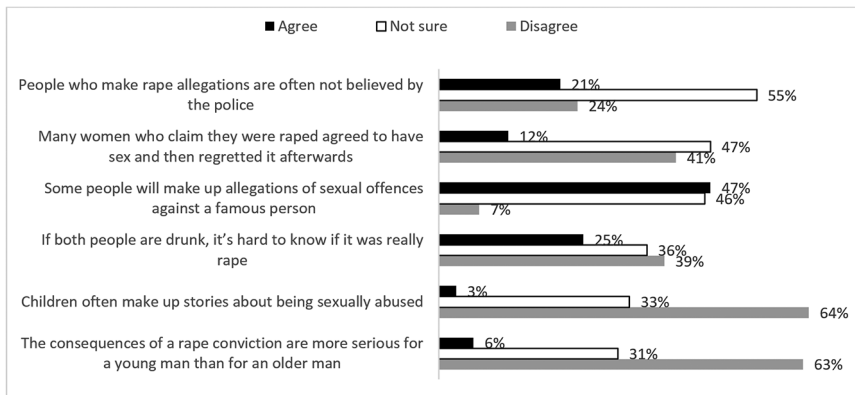


Figure 11: Juror attitudes to rape and sexual offences

A third of jurors (33 per cent) also said they were not sure if children often make up stories about being sexually abused and 31 per cent said they were not sure if the consequences of a rape conviction were more serious for a younger man than an older one. However, on both of these issues a clear majority of jurors disagreed with those statements. On all of the topics explored in the study little to no differences were found between male and female jurors; jurors of different ages; between regions; and between jurors who tried sexual offences cases and those that did not.

Implications

This first ever empirical research assessing the attitudes of actual jurors serving on real cases in England and Wales reveals that the claim made in the petition to Parliament that “Research shows that jurors accept commonly held rape myths resulting in many incorrect not guilty verdicts” is incorrect. The research also reveals that previous claims of widespread “juror bias” in sexual offences cases are not valid. Jurors at court do not hold the same views on these issues as reported in public opinion polls and “mock” jury research using students and volunteers. For example, a December 2018 *End Violence Against Women* survey⁵⁵ reported that 33 per cent of Britons said there must be violence for rape to occur. But the UCL Jury Project research conducted with actual jurors shows that only 3 per cent of jurors said rape had to result in bruises or marks and only 5 per cent of jurors said it was not rape unless a person fought back. Not only does this demonstrate that public opinion polls cannot be a proxy for what real jurors believe, but the small percentages of real jurors who believed these rape myths amounted to less than one person on any jury.

⁵⁵ End Violence Against Women, *Attitudes to Sexual Consent: Research by the End Violence Against Women Coalition by YouGov* (London: End Violence Against Women, 2018).

However, this research with real jurors does indicate that some jurors would benefit from additional guidance in two specific areas (stranger vs acquaintance rape and emotion when giving evidence) where some jurors are uncertain of the factual reality and a small number hold incorrect views. The UCL Jury Project is continuing its research with real juries at court to determine the most effective means of directing juries on these issues. What this further research is designed to answer (in a similar way to the juror notice pilot) is whether new tools can help reduce the proportion of jurors who are unsure about these factual issues and correct the very small proportions of jurors who currently hold some factually incorrect beliefs.

Why real jurors are fundamentally different from mock jurors or opinion poll takers

The UCL Jury Project research in 2017–19 with real jurors at court also explored the impact jury service has on individuals. The findings of this research demonstrate clearly for the first time why the views and decisions of real jurors who actually serve on trials can never be replicated by volunteers in mock jury studies (who are not serving jurors) or by those who take part in public opinion polls. The research was conducted with 1175 jurors, who had served on 99 juries at 6 courts in 4 different court regions. These jurors all agreed to take part in an anonymous and voluntary post-verdict survey before leaving court (1175 jurors out of a possible 1177). The fact that almost every single juror on every trial agreed to take part in the study means that this research presents the most reliable source of information on the views and attitudes of those who actually serve on juries in England and Wales.

The survey asked those who had just completed trials what their initial reaction was to being summoned for jury service. The findings (see Figure 12 below) reveal that most serving jurors were not enthusiastic about the prospect of doing jury service. They felt it was going to be inconvenient (44 per cent), they were worried about having to do jury service (38 per cent), it was the last thing 27 per cent wanted to do and 22 per cent wanted to see if they could be excused. Only 27 per cent were excited to do jury service.



Figure 12: Juror attitudes to being summoned

The same jurors were also asked to respond to the following: “Jury service is not voluntary. But if jury service had been voluntary, when you were first summoned would you have opted out of jury service?” As Figure 13 below shows, if these real jurors who had served on a trial had been given the option of opting out of jury service when they were first summoned, the overwhelming majority of jurors (87 per cent) would have chosen not to do jury service.

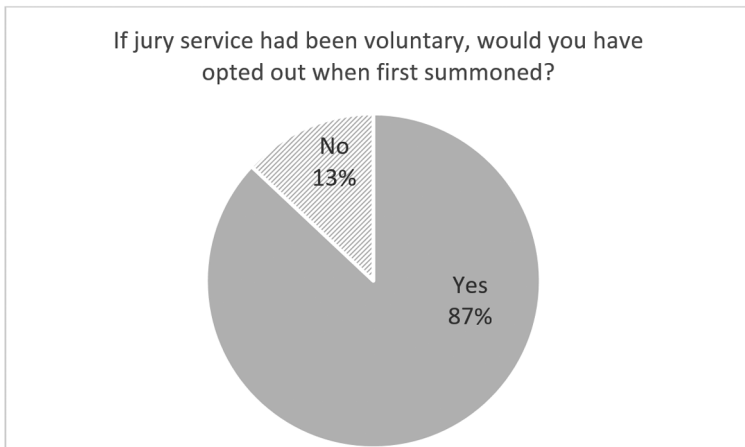


Figure 13: Jurors willing to serve if jury service was voluntary

Previous mock jury studies have routinely asserted that there are no differences between “mock” and real jurors.⁵⁶ But this new empirical evidence from actual serving jurors who have just completed trials clearly demonstrates that there are fundamental differences between real jurors and those who volunteer to take part

⁵⁶ Most mock jury studies usually cite a 1999 study by Bornstein to support this contention. See B.H. Bornstein, “The Ecological Validity of Jury Simulations: Is the Jury Still Out?” (1999) 23(1) *Law and Human Behavior* 75.

in mock jury research and public opinion polls. The one thing jurors are not is volunteers. Because mock jury research and public opinion polls only use volunteers, not real jurors, this means these sources of information have an inherent self-selection bias.⁵⁷ Regardless of how demographically representative a group of volunteer “mock” jurors are, the very fact that they have volunteered to take part in a mock jury study means they cannot be representative of the vast majority of those who actually serve on juries in England and Wales. The overwhelming majority of serving jurors are those who would never have volunteered to do jury service (87 per cent). What this in turn means is that the data from mock jury studies will be biased because those who choose to participate in these studies (and opinion polls) do not and cannot represent the overwhelming majority of actual serving jurors.⁵⁸

The impact of jury service: personal and societal

The personal impact of doing jury service for the jurors in *Bushell’s Case* was extremely negative at least in the short term; they were imprisoned, deprived of food, drink and heat and fined. We do not know what the long-term consequences may have been for any of these jurors. But in the 21st century there is a growing concern about what might be the emotional and psychological impact of jury service on members of the public. Individual cases have raised specific concerns about jurors finding it difficult to deal with extreme evidence,⁵⁹ and there have also been questions raised about the general impact on members of the public of serving on juries.⁶⁰ In 2017–18 the need for juror support was also the subject of a Canadian parliamentary inquiry.⁶¹ One study in England and Wales on the personal consequences of jury service suggested that jury service resulted in “vicarious traumatisation” of members of the public.⁶² However, that research was based on a nation-wide survey of only 64 self-selecting jurors from different cases who responded to advertisements to take a web-based survey. This clearly has a substantial self-selection bias, and given the limitations of that study, the authors cautioned against extrapolating too much from the study findings.

Experience of jury service and need for juror aftercare

To assess the true extent of this problem, the UCL Jury Project conducted research with jurors who had served on a jury to explore what effect jury service had on

⁵⁷ Self-selection bias results when participants are allowed to decide entirely for themselves whether or not they want to participate in a research study. P. Lavrakas, *Encyclopedia of Survey Research Methods* (London: Sage, 2008), “Self Selection Bias”. Also see Dr K. Broha-Bajm, “Don’t Ride with ‘Frequent Flyers’ in Your Mock Jury Research”, *Persuasive Litigator*, 25 February 2013, for additional reasons why volunteers in mock jury research are not a reliable proxy for real jurors.

⁵⁸ A clear illustration of this self-selection bias is the advert used to recruit volunteers for the Huddersfield mock jury research on this issue which read: “Ever wanted to sit on a jury? Never been asked? Strong views about crime? Now is your chance ...”. See Willmott, *An Examination of the Relationship between Juror Attitudes, Psychological Constructs, and Verdict Decisions within Rape Trials*, Doctoral thesis, University of Huddersfield (2018).

⁵⁹ ITV News, “‘Once you’ve seen you can’t unsee’: Support for jurors sitting on traumatic cases criticised”, 23 February 2018; L. Summers, “Juror says Liam Fee murder evidence ‘will never leave’ him”, *BBC News*, 4 July 2016 (this concerned a jury trial in Scotland).

⁶⁰ O. Bowcott, “Are courts demanding too much from jurors”, *The Guardian*, 7 November 2011.

⁶¹ Standing Committee on Justice and Human Rights, *Improving Support for Jurors in Canada* (Canadian House of Commons, 2018).

⁶² N. Robertson, G. Davies and A. Nettleingham, “Vicarious traumatisation as a consequence of jury service” (2009) 48 *Howard Journal* 1.

them. This research was conducted with 65 juries encompassing a total of 1175 jurors at six courts in four different court regions from January 2017 to October 2019. This is the largest study of serving jurors' experience and the impact of jury service ever conducted in the UK.⁶³

As Table 1 below shows, the overwhelming majority of jurors describe their experience in a very positive way (interesting, educational, informative), with only small proportions of jurors describing their experience of serving on a jury in very negative terms (confusing, depressing, boring). Just over half found it challenging, and just under half found it stressful.

For many years, pamphlets have been provided in jury lounges explaining the support jurors can receive from the Samaritans when their jury service is over. There is some concern (amongst Samaritans and others) that jurors may not perceive the Samaritans as an appropriate group to speak to about any difficulties they had doing jury service. The research findings support this. Most jurors would not consider calling the Samaritans (only 5 per cent would), and 4 per cent more said they would not call the Samaritans because they perceive that as an option "only for people with more serious problems".

Table 1: How jurors who served on a jury describe jury service

Which of the following best describe what it was like for you to serve on a jury?	
Interesting	78%
Educational	58%
Challenging	56%
Informative	55%
Stressful	42%
Exciting	37%
Frustrating	21%
Worrying	19%
Empowering	16%
Boring	12%
Confusing	9%
Depressing	5%

The perception that the Samaritans may not be appropriate for jurors also appears to be reflected in the fact that, if there was something more generic such as a "juror helpline", almost half of all jurors (46 per cent) said they definitely would (14 per cent) or might (32 per cent) call this (see Table 3 below). The 66 per cent of jurors who said they would or might call such a helpline, gave a mix of care issues (how jury service is affecting their life, how to deal with other jurors), legal issues (questions about rules jurors need to follow) and jury process issues (claiming expenses, dealing with employers) as reasons they might call a juror helpline (see

⁶³ The most comprehensive study of stress in American jurors, conducted by the National Center for State Courts (NCSC), surveyed 401 jurors in six states. See National Center for State Courts, *Through the Eyes of the Juror: A Manual for Addressing Juror Stress* (NCSC, 1998), NCSC Publication No.R-209.

Table 4 below). The jury process issues are ones that should already be dealt with by the courts (i.e. the 24 per cent who said they might contact a helpline to ask about daily payments, travel, claiming expenses, or the 20 per cent who said they might contact the helpline for advice in dealing with their employer while they were on jury service). But between a quarter and a third said that if there was such a helpline they would or might contact it to discuss or seek advice on more personal issues to do with jury service (33 per cent to discuss how jury service was affecting their lives; 27 per cent to seek advice about dealing with other jurors).

Table 2: Serving jurors likelihood of calling the Samaritans

Would you ever consider calling the Samaritans to talk about how you feel about your time on jury service?	
No	73%
Not sure	16%
Yes	5%
No, I think the Samaritans is only for people who have serious problems	4%
No, I don't think I'm allowed to do this	1%
I would consider this if I knew the people I spoke to understood what it meant to do jury service.	1%
I might consider this but I would want more information before I decided	0%
I would consider this if I knew I would be anonymous	0%

Table 3: Serving jurors likelihood of calling a “juror helpline”

If there was a special helpline for jurors to discuss any concerns about their time on jury service, do you think you would call this helpline?	
No	34%
Maybe	32%
Not sure	19%
Yes definitely	14%

Table 4: Serving jurors reasons for calling a “juror helpline”

If you would or might call a special helpline for jurors why might you call it?	
To discuss how jury service was affecting my life	33%
To ask advice about how to deal with problems with other jurors	27%
To ask for more information about rules I needed to follow as a juror	25%
To ask about things like daily payments, travel and claiming expenses	24%
To ask advice about how to deal with my employer while on jury service	20%

The new juror notice introduced in all jury trials in April 2018 provides information about the help and guidance available to jurors during the trial and what support is available to jurors after the trial. Her Majesty's Courts and Tribunal Service has also recently developed new guidance for jurors providing general

advice for those who have completed jury service about how jury service may affect them and where to seek support.⁶⁴

Societal impact of jury service

While the recent focus of policy makers and media reports has been on the possible detrimental effects of jury service on members of the public, the wider impacts and potential benefits of jury service on both a personal and societal level have received less attention. There is strong evidence from research elsewhere that jury service can have a positive impact on both members of the public and society. A long term study in the United States⁶⁵ has found that people who served on a jury and had never voted before were significantly more likely to vote at the next election. The study found that jury service also sparked long term changes in how people used the media and their involvement in community and civic groups. The UCL Jury Project research conducted in 2017–19 with real jurors at court in England and Wales has also revealed the transformational effect of jury service on members of the public in this jurisdiction.

As discussed above, in post-verdict surveys jurors were asked about their attitude to jury service both before they attended court and when they were leaving after returning a verdict. The first part of that research found that almost all jurors who had just completed a trial said that when they were first summoned if jury service had been voluntary they would not have done it. But having done jury service, most of these jurors said that the experience of being in court for the trial was interesting, informative and educational. And as a result, 81 per cent of these jurors said they would now be happy to serve again if summoned (see Figure 14 below). The experience of being in court is clearly transformational for most members of the public in this jurisdiction. This also helps to illustrate why mock jury research with volunteers, not real serving jurors, cannot reproduce a true cross section of jurors. No matter how demographically representative volunteer “mock” jurors are, they can never reflect the transformational impact jury service has on real serving jurors.

⁶⁴ The pamphlet, *After jury service: Practical advice for jurors who have completed jury service*, is currently being introduced in courts in England and Wales.

⁶⁵ J. Gastil, E. Pierre Dress, P.J. Weiser and C. Simmons, *The Jury and Democracy: How Jury Deliberation Promotes Civic Engagement and Political Participation* (Oxford: Oxford University Press, 2010).

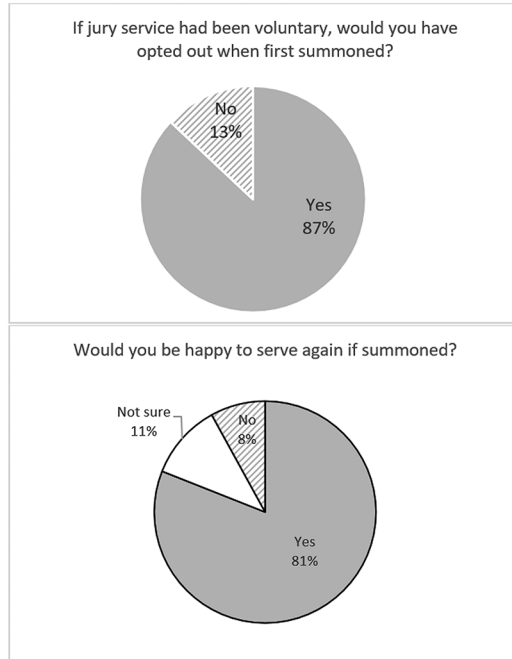


Figure 14: Transformational impact of jury service

Jury service is a unique and important public service. At a time when there are growing calls for the removal of trial by jury in England and Wales, it is more important than ever to understand the true impact of jury service on members of the public and society at large. It is right that proper steps are taken to help jurors in need of support. But this should be done and understood in the context of the overwhelmingly positive effects of jury service on the vast majority of members of the public that serve on a jury. The evidence from research with real serving jurors at court in England and Wales indicates that we should not exclude more people from jury service out of fear of the impact of serving or remove juries from certain cases because of false assumptions about juror bias or concerns over juror disobedience. Instead we need to find the best ways of ensuring that jurors clearly understand the rules of jury service, are given the best guidance to understand cases and receive the support available to them. This will enable more people to be empowered by jury service and not negatively affected by it. The consequences of removing trial by jury are profound because empirical research with real serving jurors shows that the consequences of doing jury service are also profound for fairness in the criminal justice system and for democracy. It is what Edward Bushell and his fellow jurors spent their time punished and imprisoned for 350 years ago.